

REMARKS

Upon entry of this amendment, claims 38, 39, 40, 45, 46, 48, 49, 50, 54, 57, 58, 62, 64, 65, 70 and 71 will be pending in the application. Claim 38 is amended to recite “cytotoxin associated immunodominant (CAI) antigen” as supported by the specification on page 3, line 34. Claims 49, 50, 54, and 57 are amended to depend from claim 38. Claim 45 is amended to omit the dependency on canceled claim 44. Claims 1-37, 41-44, 47, 51-53, 55, 56, 59-61, 63, 66-69, and 72 are canceled. No new matter is introduced.

As an initial matter, applicants note with appreciation the examiner’s withdrawal of the Office Action mailed January 23, 2009 and replacement thereof with the present Office Action. Applicants further note with appreciation the rejoinder of claims 71 and 72 in the present application.

Obviousness-type double patenting rejection

Claims 38-40, 44, 49, 50, 54, 62, 64, 65, 71, and 72 are provisionally rejected for alleged obviousness-type double patenting over claims 39 and 40 of copending U.S. Appl. No. 11/580,632. Applicants request that the rejection be held in abeyance pending an indication of allowable subject matter in the present application or in U.S. Appl. No. 11/580,632.

The new matter rejection should be withdrawn.

Claims 44, 45, 46, 49, 50, 54, and 57 are rejected under 35 U.S.C. § 112, first paragraph for allegedly containing new matter. Applicants disagree with the rejection. Nonetheless, without conceding the propriety of the rejection and in an effort to advance prosecution of the application, applicants have canceled claim 44. Applicants also have amended claims 49, 50, 54, and 57 to depend from claim 38 and have amended claim 45 to omit the dependency on canceled claim 44. Withdrawal of the rejection is respectfully requested.

The rejection of claims 44-46, 49, 50, 54, 57, and 72 over the Covacci reference should be withdrawn.

Claims 44-46, 49, 50, 54, 57, and 71 are rejected under section 102(b) for alleged anticipation by Covacci *et al.*, *PNAS*, 1993, 90:5791-5795 (“the Covacci reference”). Applicants respectfully note that it appears that the examiner’s reference to claim 71 as included within the scope of the rejection was intended to be reference to claim 72 in view of the description of the subject matter encompassed by the claim on page 6 of the Office Action.

Applicants disagree with the rejection. Nonetheless, without conceding the propriety of the rejection and in an effort to advance prosecution of the application, applicants have canceled claims 44 and 72. Applicants also have amended claims 49, 50, 54, and 57 to depend from claim 38 and have amended claim 45 to omit the dependency on canceled claim 44. Claim 71 depends from claim 38. The claims are fully supported by Figure 4 of International Appl. No. PCT/EP93/00472, filed March 2, 1993. Because the Covacci reference is not prior art to the present claims, the rejection should be withdrawn.

The rejection of claims 38-40, 44-46, 48-50, 54, 57, 58, 62, 64, 65, 70, and 71 for alleged indefiniteness should be withdrawn.

Claims 38-40, 44-46, 48-50, 54, 57, 58, 62, 64, 65, 70, and 71 are rejected under the second paragraph of section 112 for alleged indefiniteness. Without conceding the propriety of the rejection and in an effort to advance prosecution of the application, applicants have amended claims 38 to recite “cytotoxin associated immunodominant (CAI) antigen” as supported by the specification on page 3, line 34. Withdrawal of the rejection is respectfully requested.

The rejection of claims 44-46 over the Peterson reference as evidenced by the Stein reference should be withdrawn.

Claims 44-46 are rejected under section 102(b) for alleged anticipation by Peterson *et al.*, *Nature*, 1991, 354:369-373 (“the Peterson reference”) as evidenced by Stein *et al.*, *Mol. Microbiol.*, 43:971-980, 2002 (“the Stein reference”). Applicants disagree with the rejection. Nonetheless, without conceding the propriety of the rejection and in an effort to advance

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prosecution of the application, claim 44 is canceled. Claims 45 and 46 as amended herein depend from claim 38. Withdrawal of the rejection is respectfully requested.

Conclusion

Applicants believe that the foregoing constitutes a complete and full response to the Office Action of record. Accordingly, an early and favorable Action is respectfully requested. Should any issues remain unresolved by the present remarks, the Examiner is invited to contact the undersigned at 215.568.3100.

Respectfully submitted,

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